

The Honorable James L. Robart

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

AL-PENYO BROOKS,

Defendant.

NO. CR20-193 JLR

ORDER

Defendant Al-Penyo Brooks is charged by indictment with one count of Sex Trafficking of a Minor (Docket No. 13). Trial in this matter was originally set for January 19, 2021. (Docket No. 18.) On December 14, 2020, upon consideration of the reasons set forth in the government's unopposed Motion to Continue Trial (Docket No. 24), the Court issued an order striking the January 19, 2021 trial date and setting a status conference to discuss a new trial date. On April 2, 2021, the government filed a Motion to Continue Trial asking the Court to set a trial date that will provide defense counsel with sufficient time to prepare for trial, and that will not implicate the current public health concerns posed by the pandemic.

Having thoroughly considered the relevant record; General Orders 01-20, 02-20, 03-20, 04-20, 07-20, 08-20, 13-20, 15-20, 18-20, and 04-21 of the United States District Court for the Western District of Washington, addressing measures to reduce the spread and health risks from COVID-19, which are incorporated herein by reference; as well as

1 the Defendant's objection to a continuance of this matter, the Court continues the trial
2 date for the reasons explained below.

3 The COVID-19 pandemic has made it impossible to proceed with trial either on
4 the original trial date (January 19, 2021) or at this time. General Order 04-21, issued on
5 March 19, 2021, made the following findings, which are incorporated by reference
6 herein:

7 In the last two months, the daily number of positive cases, hospitalizations,
8 and deaths have significantly decreased in the Western District of
9 Washington. A significant percentage of the public in this district has been
10 vaccinated against the novel coronavirus. The vaccine has been available
11 to those most vulnerable to serious complications from the virus and is now
12 available to the Court's staff. The distribution of vaccines to other
13 members of the general public is anticipated to proceed in phases through
14 the next two months. At this time, it appears likely that the majority of
15 individuals with business in the Courthouses will have access to the vaccine
16 by June. Until the majority of the public has received the vaccine and been
17 fully vaccinated, limiting the size and frequency of gatherings remain
18 critical to preventing serious injury and death from COVID-19.

19 W.D. Wash., General Order No. 04-21, at 1-2.

20 As noted in General Order 04-21, limiting the size and frequency of gatherings
21 remains critical to mitigating the public health risks caused by the COVID-19 pandemic.
22 The continuing public health situation resulting from the pandemic also limits the
23 availability and ability of witnesses, counsel, and Court staff to be present in the
24 courtroom. Further, because of the recommendations that individuals at higher risk of
25 contracting this disease – including individuals with underlying health conditions,
26 individuals age 60 and older, and individuals who are pregnant – avoid large groups of
27 people, at least until fully vaccinated, at this time, it would be difficult, if not impossible,
28 to get a jury pool that would represent a fair cross section of the community. Based on the
recommendations, it would also be medically inadvisable to do so.

In recognition of all these public health risks and concerns, General Order 04-21
continued all District Court civil and criminal in-person hearings and trials until June 30,

2021. W.D. Wash., General Order No. 04-21, at 2. The General Order allows for the commencement of some limited in-person criminal proceedings starting on May 3, 2021, with the Court strictly limiting the number of people that can physically attend these proceedings. W.D. Wash., General Order No. 04-21, at 2. In addition, in-person criminal trials will be scheduled starting on May 17, 2021. These trials will proceed one-at-a-time in each courthouse; there will not be simultaneous in-person trials. W.D. Wash., General Order No. 04-21, at 2. There is a large backlog of criminal trials that will take several months, if not more, for the Court to schedule, given the requirement that only one trial at a time occur within a courthouse.

In addition, defense counsel Stephan Illa was only recently appointed to represent the Defendant in this matter. The discovery in this matter is voluminous and will require, among other things, a review of the Defendant's social media account and the statements of numerous witnesses. Defense counsel will need adequate time in order to fully review the discovery and prepare for trial and pretrial motions.

For these reasons, the Court CONTINUES the trial in this matter should be continued to August 23, 2021 and FINDS as follows:

1. In light of the recommendations made by the Centers for Disease Control and Prevention and Public Health for Seattle and King County regarding social distancing measures required to stop the spread of this disease, it was not possible to proceed with trial either on the original trial date of January 19, 2021, or at this time. *See* 18 U.S.C. § 3161(h)(7)(B)(i).

2. Because of the recommendations that the many individuals at higher risk of contracting this disease avoid large groups of people, and because vaccination of those groups is not complete, it would be difficult, if not impossible, to obtain a jury pool that would represent a fair cross section of the community either on the original trial date of January 19, 2021, or at this time. *See* 18 U.S.C. § 3161(h)(7)(B)(i). Based on the recommendations, it would also be medically inadvisable to do so.

1 3. The Court further finds that given the complexity of the case a continuance
2 of the original trial date was necessary to ensure that defense counsel has adequate time
3 for effective case preparation and to fully review the record and prepare a defense.
4 Further, current counsel Stephan R. Illa was appointed to represent the Defendant on
5 March 8, 2021, when Defendant's original counsel was permitted to withdraw. Given the
6 amount of discovery in this case, counsel will need sufficient time in order to effectively
7 represent the Defendant in this matter. The Court finds that these factors outweigh the
8 best interests of the public and the Defendant in a speedy trial within the meaning of the
9 Speedy Trial Act, Title 18, United States Code, Section 3161(h)(7)(A).

10 4. As a result, the failure to grant a continuance of the trial date in this case
11 before August 23, 2021, would result in a miscarriage of justice. *See* 18 U.S.C. § 3161(h)
12 (7)(B)(i)

13 5. Therefore, the ends of justice served by continuing the trial in this case to
14 August 23, 2021, outweighs the best interest of the public and Defendant in a speedier
15 trial. 18 U.S.C. § 3161(h)(7)(A).

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1 Accordingly, the Court ORDERS:

2 1. Trial in this matter is CONTINUED to August 23, 2021, and the pretrial
3 motions deadline is set for July 6, 2021.

4 2. The period of time between the date of the original status conference in this
5 matter (December 13, 2020) and the new trial date is an excludable time period under 18
6 U.S.C. § 3161(h)(7)(A).

7 DATED this 5th day of April, 2021.

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10 HONORABLE JAMES L. ROBART
11 United States District Judge

12 Presented by:

13 s/ Catherine L. Crisham

14 Catherine L. Crisham

15 Assistant United States Attorney
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